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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the third periodic report of Belgium

Addendum

Information received from Belgium on follow-up to the concluding observations* **

[Date received: 21 November 2014]

I. Paragraph 11: Fundamental legal safeguards

"11. While applauding the adoption of the 'Salduz law', which affords greater protection for the rights of persons from the moment that they are placed in custody, the Committee remains concerned that the right of access to a lawyer is effective only from the time persons are first questioned by the police rather than as soon as they are placed in custody, that private consultations with a lawyer are limited to 30 minutes, which is all the more restrictive for persons who are detained, and that, in practice, there are limitations on this right in respect, for example, of lawyers' prompt access to case files. In addition, the Committee notes that the right to be examined by an independent physician and the right to contact family members or other persons of the detainee's choice are restricted and that persons are informed of their rights in writing, without any explanation, which makes it difficult for some persons who have been deprived of their liberty to understand them (arts. 2 and 11).

"**The Committee recommends that the State party take effective steps to ensure that all persons who are held in custody actually have the benefit, from the very outset of their deprivation of liberty, of all the fundamental legal safeguards, namely, the right to be informed in an appropriate language of the reasons for their detention, the right to have prompt access to a lawyer and to consult him or her immediately following their detention, the right to contact family**

* The present document is being issued without formal editing.
** The annexes to this report may be consulted in the secretariat files.

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members or other persons of their choice and the right to have an independent medical examination performed without delay by a doctor of their choice."

1. Belgian legislation on the assistance of counsel is designed to ensure that legal assistance is arranged before the first interview. A person deprived of their liberty must be given a hearing within 24 hours of their arrest. As soon as an arrest has taken place the person is informed of their rights. Under article 2 bis, paragraph 1, of the Act of 20 July 1990, from that time and before the first interview, the person has the right to speak in private with a lawyer called in via the web application designed for that purpose in cooperation with the bar association.

> "Article 2, paragraph 1, of the Act of 20 July 1990 on pretrial detention. Anyone deprived of their liberty in accordance with article 1 or 2, or pursuant to an arrest warrant under article 3 has the right, from this moment and before the first interview by the police or the prosecutor or the investigating judge, to speak in private with a lawyer of their choice. If they have not chosen a lawyer or the lawyer is unable to attend, contact is made with the standby service organized by the French-speaking, German-speaking or Flemish bar association, or by the President of the bar association or their deputy.
>
> "If the person to be interviewed does not have sufficient means, articles 508/13 to 508/18 of the Judicial Code, on free or partially free assistance from a designated lawyer, are applied in full.
>
> "The private consultation with the lawyer must take place within two hours of the lawyer or standby service being contacted. As soon as the consultation is over (30 minutes maximum), the hearing may begin.
>
> "If the private consultation has not taken place within two hours, a private telephone consultation may still be held with the standby service, after which the hearing may begin.
>
> "Only after a private telephone conversation with the standby service, and voluntarily and after due consideration, can an adult deprived of liberty waive their right to a private consultation with a lawyer. The person to be interviewed must give their waiver in writing in a signed and dated document. Minors may not waive this right.
>
> "All these points shall be recorded in detail in a written report."

2. The assistance of counsel is thus arranged without delay, but allowance must be made for the fact that, in practice, the lawyer needs time to reach the police station.

3. The information required to be given to a person deprived of liberty is set forth in article 47 bis, paragraph 3, of the Code of Criminal Procedure:

> "3. Notwithstanding paragraphs 1 and 2, subparagraph 1 (1) and (2), anyone deprived of liberty under articles 1, 2, 3, 15 bis and 16 of the Act of 20 July 1990 on pretrial detention shall be informed of their rights under articles 2 bis, 15 bis and 16 of that Act."

4. These rights are communicated by, on the one hand, the departments responsible for the hearing, at the start of each hearing, and, on the other hand, by means of a written statement of rights as provided under article 47 bis, paragraph 4, of the Code of Criminal Procedure. The form and content of this statement are established by the Royal Decree of 16 December 2011 on the application of article 47 bis, paragraph 4, of the Code of Criminal Procedure. Under article 3 of the Decree, the Minister of Justice is responsible for translating the statement of rights into at least the official languages of the member States of the European Union. To date the statement of rights has been translated into 52

languages, i.e., the official languages of the European Union, the most widely used minority languages in Europe – Albanian, Armenian, Berber, Bosnian, Chinese, Macedonian, Ukrainian, Russian, Serbian, Tartar, Turkish and Belarusian — and the other most widely used languages — Arabic, Bengali, Hindi, Japanese, traditional Chinese, simplified Chinese, Javanese, Korean, Vietnamese, Marathi, Tamil, Urdu and Gujarati.

5. The statement of rights handed to the person deprived of liberty explains what rights are required to be communicated to them at the start of the hearing and during and at the end of the hearing. The statement also mentions the rights they should also be informed of orally at the start of the hearing. The rights to be communicated before the start of the hearing are:

- A concise description of the facts;
- The right to silence;
- The right to a private consultation with a lawyer and to assistance during the hearing;
- The right to inform someone of the arrest;
- The right to medical assistance.

6. The statement of rights goes on to explain the additional rights of a detainee during the hearing itself, in particular:

- The compulsory information the police officer is required to give when opening the hearing;
- The right to refer to documents during the hearing;
- At the end of the hearing: the right to have sight of the record of the hearing or to request that it be read out, and the right to make corrections or add further details;
- The right to the assistance of an interpreter.

7. The statement of rights also explains how deprivation of liberty actually works and the person's rights in the event that an arrest warrant is issued by the investigating judge. All language versions may be consulted on the website of the Federal Public Service for Justice (www.justitie.belgium.be), under the heading "*Déclaration des droits*" (Statement of rights).

8. The rights are also set out in the report templates the police are required to use, in accordance with the instructions of the College of Prosecutors General, in order to ensure that the rights are notified verbally. Where a person does not speak the language, the services of an interpreter are requested. During training for officials in the various police services, particular attention is paid to verbal communication of rights to a person deprived of liberty.

9. As soon as the lawyer arrives, the arrested person is allowed a 30-minute private interview with them. The time limit is related to the short duration of the period of arrest, which is 24 hours, as previously mentioned. However, the Constitutional Court has found (ruling No. 7/2013 of 14 February 2013) that in exceptional circumstances — for example where the arrested person and their lawyer do not speak the same language and an interpreter is required — flexibility should be shown in enforcing the time limit for the private consultation and that, depending on the specific circumstances, a consultation of more than 30 minutes may be permitted within, limits given the exigencies of the investigation and on condition that it does not create problems in terms of the 24-hour deadline. The need for flexibility is mentioned in College of Prosecutors General circular COL 8/2011, containing instructions to police departments, as amended at several points

following the Constitutional Court ruling. The bar associations have pointed out that a person deprived of liberty also has their rights explained to them by the lawyer during the private consultation.

10. In terms of access to the file, from the moment of deprivation of liberty, all necessary action and enquiries must be carried out within 24 hours. In most cases, at the time of arrest there is as yet no file and a record is made of the hearing. In its ruling of 14 February 2013, the Constitutional Court states that it is therefore not possible to make a file available within 24 hours. The following provisions should also be noted: according to article 18 of the Act on pretrial detention, a copy of the record of the hearing should be given to the accused when they are notified of the arrest warrant; according to article 21 of the Act, the investigating court must hold a hearing of the parties within five days (council chamber, with right of appeal to the indictments division); as part of this procedure, under article 21, paragraph 3, of the Act, access must be given to the full file at least one working day before the hearing.

11. The right to consult an independent doctor is unrestricted and guaranteed under article 2 bis, paragraph 4, of the Act of 20 July 1990 on pretrial detention:

> "4. Anyone who is deprived of their liberty under articles 1, 2 or 3 has the right to medical assistance.
>
> Without prejudice to the right under subparagraph 1, this person has subsidiarily the right to request an examination by a doctor of their choice. The person bears the cost of the examination."

12. The right to notify family members of the deprivation of liberty is established in article 2 bis, paragraph 3, subparagraph 1, of the Act of 20 July 1990 on pretrial detention:

> "3. Anyone who is deprived of their liberty pursuant to articles 1, 2 or 3 is entitled to have the interviewer or a person designated by the interviewer notify a trusted individual of the arrest, using the most appropriate means of communication."

13. However, in accordance with European Court of Human Rights case law, under paragraph 3, subparagraph 2, notification may be postponed for a limited period, by reasoned decision of the crown prosecutor or the investigating judge, where there are serious grounds for fearing that attempts may be made to dispose of evidence, that there is collusion between the person concerned and third parties or that the person concerned might evade justice:

> "If there is good reason to fear that, were this information communicated, an attempt to dispose of evidence might be made, that there could be collusion between the person arrested and third parties, or that the persons might evade justice, the crown prosecutor or investigating judge in charge of the case may, on the basis of a reasoned decision, postpone the communication for as long as necessary in the interests of the investigation."

II. Paragraph 12. Register of persons in police custody

> "12. The Committee notes with concern that the general register of persons held in police custody provided for in article 33 bis of the Police Functions Act has not yet been introduced. The Committee also regrets that, according to the information provided by the State party in its report, each police district has created its own register, which does not always contain enough information to make it possible to ensure that detainees' rights are respected (arts. 2 and 11).

"**The Committee reiterates its earlier recommendation (CAT/C/BEL/CO/2, para. 20) and urges the State party to take appropriate measures to establish a standardized, computerized and centralized official register in which arrests are immediately and scrupulously recorded, along with, as a minimum, the following information: (i) the time of the arrest and detention; (ii) the reason for detention; (iii) the name(s) of the arresting officer(s); (iv) the location where the person is detained and any subsequent transfers; (v) the names of the officers responsible for that person while in custody; and (vi) whether the detainee had any signs of injury at the time of detention. The State party should carry out monitoring and inspections on a systematic basis in order to ensure compliance with this obligation in line with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988).**"

14. All police services now effectively have a register of persons in custody. A standard model register, the contents of which meet international standards, is already available to the various services concerned. Compliance with legal obligations is thus assured.

15. However, the royal decree establishing the contents of registers of persons in custody has yet to be formally adopted. The decree is currently in draft form and draws extensively on international treaties, Belgian legislation and modern praxis. The draft has yet to be considered by the competent bodies. Since the last Parliament was not able to deal with the draft, it will be addressed in the newly-opened Parliament. The Belgian authorities undertake to forward the draft decree to the Committee as soon as it is made public.

16. A computerized register of detainees implemented and piloted by the Federal Criminal Police of Brussels was evaluated and modified and is now institutionalized. The results are positive. Improvements are continually made to the register and it is now used in other police and federal criminal police districts that have shown an interest in the project.

17. Oversight and monitoring are carried out by the competent police authorities in accordance with the legal and regulatory provisions governing the police (internal oversight), while inspection and regular monitoring of places of police custody is the responsibility of the Inspectorate General of the Federal and Local Police (external oversight).

III. Paragraph 13. Use of force by law enforcement officials and immediate, thorough and impartial investigations

"13. The Committee takes note with concern of reports that, in some cases, law enforcement officials use excessive and unjustified force during questioning or arrests. The Committee deeply regrets the fact that Jonathan Jacob reportedly died in a cell at the Mortsel police station, on 6 January 2010, after being subjected to physical violence by police officers. The Committee also deeply regrets the fact that, three years after the event, the investigation has not been concluded and the perpetrators have not been brought to justice and therefore remain unpunished. The Committee takes note with concern of reports that judicial sanctions imposed upon police officers who are found guilty of acts of torture or ill-treatment are often symbolic and not commensurate w ' h the seriousness of the acts in question. Despite the efforts of the State party to strengthen the independence of the Standing Committee for Police Monitoring (Committee P) and its Investigation Service, the Committee remains concerned by the fact that some of the investigators are former police officers, which may compromise their impartiality when they are required to

conduct objective and effective investigations into allegations that acts of torture and ill-treatment have been committed by members of the police (arts. 2, 12, 13, and 16).

"**The State party should:**

(a) Conduct prompt, thorough, effective and impartial investigations into all alleged cases of brutality, ill-treatment and excessive use of force by law enforcement personnel, and prosecute and sanction officials found guilty of such offences with appropriate penalties;

(b) Provide detailed information on the investigation into the case of Jonathan Jacob;

(c) Set up a fully independent mechanism for the investigation of allegations of torture and ill-treatment and establish a specific register of allegations of torture and cruel, inhuman or degrading treatment or punishment;

(d) Ensure that law enforcement officials receive training on the absolute prohibition of torture and that they abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(e) Take appropriate measures to further strengthen supervision and monitoring mechanisms for the police force, particularly Committee P and its Investigation Service, which should be composed of independent experts recruited from outside the police."

A. Investigation, prosecution and punishment

Prison officials

18. Prison officials suspected of acts of violence or ill-treatment against prisoners may be subject to criminal or disciplinary proceedings (Royal Decree of 2 October 1937 on the status of State officials, and article 29 of the Code of Criminal Procedure). Where a criminal complaint is brought against prison officials with permanent appointments, any disciplinary proceedings that might have begun shall be suspended. Criminal complaints may be brought by a victim and, in certain cases, may also be brought directly by the Federal Public Service for Justice itself.

Updated statistics of Committee P regarding members of police departments

19. The Committee will find updated tables from Committee P below.

Table 1

Complaints alleging acts of torture or ill-treatment by law enforcement officers during 2005–2013, submitted directly to Committee P[1]

Preliminary comments

Complaints	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*
Inhumane treatment	4	2	3	3	1	1	0	2	2
Inhumane or offensive treatment, in the broadest sense	22	18	23	19	29	14	8	22	8
Degrading treatment	1	5	1	2	2	1	1	4	4

[1] The year given is the year in which the case was opened by Committee P.

Complaints	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*
Humiliating behaviour	42	20	36	31	31	26	32	22	53
Police violence against persons or property	147	139	179	136	161	174	137	204	189
Total number of complaints submitted directly to Committee P	**2 221**	**2 314**	**2 219**	**2 339**	**2 407**	**2 452**	**2 686**	**2 680**	**2 885**

20. Comments on Table 1:

- The categories reflect the description of the facts as alleged by the complainant or informant. The categories have not been subsequently amended to reflect the results of the investigation. It should therefore be noted that the figures given below relate only to complaints and reports of facts as alleged and thus cannot be considered to necessarily reflect facts actually established;
- Extracts from the Committee P database do not distinguish between allegations of police violence against persons and allegations of police violence against property. The statistics given should therefore be treated with a degree of caution.

Table 2

Criminal investigations by the Police Investigation Service into acts of torture or ill-treatment by law enforcement officials, 2005–2013[2]

Criminal investigations	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*	*2013*
Torture	0	0	0	1	0	0	0	0	2
Inhumane treatment	1	2	1	0	6	4	3	1	1
Inhumane or offensive treatment, in the broadest sense	3	2	1	1	1	0	0	0	1
Degrading treatment	1	2	0	1	1	0	0	0	1
Humiliating behaviour	0	1	1	1	0	0	0	0	0
Police violence against persons or property	242	155	81	48	51	46	45	26	30
Total number of judicial investigations by the Police Investigation Service	**592**	**444**	**281**	**279**	**259**	**281**	**224**	**118**	**128**

21. Under the Ministry of Justice Directive of 22 September 2011 on the assignment of tasks in criminal police investigations into offences involving police officers, which distributes the tasks among the Police Investigation Service, the Inspectorate General of the Federal and Local Police and the other police services, investigations into offences involving a violation of articles 2 and 3 of the European Convention on Human Rights are in principle assigned to the Police Investigation Service.

[2] The year given is the year in which the case was opened by Committee P.

Table 3

Criminal sentences handed down against police officers for acts of torture or ill-treatment in 2009–2013 and notified to Committee P by the courts pursuant to article 14, subparagraph 1, of the Organization Act of 18 July 1991

Preliminary comments

	2009		2010		2011		2012		2013										
Verdicts	*Not proved*	*Proved*	*Not proved*	*Proved*	*Not proved*	*Proved*	*Not proved*	*Proved*	*Dismissal statute of limitations*	*Dismissal other*	*Acquittal statute of limitations*	*Acquittal other*	*Social protection measure*	*Judgement deferred*	*Declaration of guilt*	*Community service (suspended)*	*Community service (partially suspended)*	*Community service*	*Imprisonment fine (suspended)*	*Imprisonment fine (partially suspended)*	*Imprisonment fine*
Unlawful violence	4	5	18	4	9	7	18	6		43		2		5							
Bodily harm	20	10	31	9	20	18	31	8		23		1		4							
Murder/homicide	2		3		1		1	1				1									
Inhuman/degrading treatment	1			2	4	1	15														

22. Comments on Table 3:

- Each member of the integrated police force is counted separately in each court decision;
- Each charge against a member of the integrated police force is counted separately;
- A member of the integrated police force prosecuted in the same case several times on the same charge is only counted once. Only the heaviest penalty is noted;
- The data was last updated on 15 May 2014. Some court decisions for 2009, 2010, 2011 and 2012 were again transmitted to Committee P after the preparation of the last table,[3] which explains why some existing figures have changed in the meantime.

Committee P annual report 2012: analysis of court rulings on police violence notified to Committee P[4]

23. The 2012 annual report of Committee P analyses the court rulings on police violence notified to Committee P between 2009 and 2012: a total of 91 court rulings on police violence were notified to Committee P during this period, out of a total of 693 court rulings notified. The court rulings on police violence thus notified relate to 168 police officers in all. Of the 168 police officers prosecuted (142 of whom were inspectors), 45 were sanctioned. Overall, then, on average, nearly 27 per cent of police officers were found guilty of the charges of police violence on which they were prosecuted. Acts of police violence were found proven in 39 of the 91 cases analysed. An analysis of the sentences handed down in these 39 cases shows the following: deferment of judgement in 23 cases, granted to 28 police officers in all; suspended prison sentence in 5 cases; partially suspended prison sentence in 6 cases; just one prison sentence (6 months) – existing

[3] Data previously communicated to the Committee.

[4] This report was not mentioned in the third written report of Belgium as it was published later. It can be consulted at www.comitep.be/2012/2012FR.pdf, pp. 105–135.

criminal record: one community service order; three declarations of guilt by reason of unusually long proceedings.

B. Individual case: Jonathan Jacob

24. In connection with the consideration of the third report of Belgium in November 2013, the following information was provided to the Committee: "It is correct that Jonathan Jacob died on 6 January 2010 in a police cell in Morstel. The following day the Antwerp Prosecutor informed the investigating judge with a view to launching an inquiry into the death. The investigation is still under way, albeit in its final phase, but further enquiries, requested by the Antwerp Prosecutor's Office, still need to be made. In parallel with this investigation, an inquiry has also been conducted into the role of a deputy prosecutor in the Antwerp Prosecutor's Office in this matter, but that case was ultimately dismissed. Following a television broadcast in 2013, that investigation was reopened, and after the new investigation the case was closed." After that the inquiry into the death of Jonathan Jacob was closed. By decision of the Antwerp Council Chamber in February 2013, three persons accused had been referred to the trial court. However, at the request of the public prosecutor's office following a further inquiry, by a ruling of the Antwerp Indictments Division on 6 November 2014, 11 accused (8 police officers, 1 commissioner, 1 director and 1 psychiatrist) were ultimately referred to the Antwerp Correctional Court.

C. Training and use of force

Prison officials

25. Prison officials are not issued with firearms. The Act of 12 January 2005 on the principles of prison administration and the legal status of detainees (the Principles Act) describes the circumstances under which prison officials may use means of coercion. Ministerial Circular No. 1810 of 19 November 2009 on means of coercion and intervention equipment provides further details. The articles of the Principles Act governing means of coercion are reproduced below, together with the additional information contained in the ministerial circulars:

> "Art. 119
>
> (1) Direct coercion may only be used against detainees in the interests of maintaining order or security when there is no other means of doing so and may only be used for as long as is strictly necessary.
>
> (2) Pending the intervention of the police, direct coercion may be used under the same conditions against individuals other than detainees, where such persons are attempting to free detainees, illegally enter a detention facility, or remain on the premises without authorization.
>
> (3) Use of direct coercion within the meaning of paragraph 1 is the use of physical restraint against persons with or without recourse to material or mechanical equipment, to instruments of restraint that limit freedom of movement or to weapons which, under the terms of the Weapons Act, form part of regulation equipment."

26. The following means of coercion are allowed:

- Handcuffs;
- Shackles.

27. In addition, the following items of intervention equipment are allowed:

- Batons;
- Shields;
- Protective clothing;
- Helmets.

28. Furthermore, the use of pepper spray by specially trained officials is allowed in the security wing of Bruges Prison.

29. The ministerial circular on security measures to be applied when transporting detainees to hospital, during medical appointments or hospitalization does not allow the use of batons as a means of restraint. Only the use of means of coercion (handcuffs and shackles) is allowed. When transporting detainees to hospital, fabric handcuffs may also be used (Ministerial Circular No. 1780 of 23 December 2005 on security measures to be applied when transporting detainees to hospital, during medical appointments or hospitalization, general principles, point (2)).

"Art. 120

(1) Where several suitable means of direct coercion are available, the least harmful one shall be chosen."

The principle of subsidiarity underpinning this article may be explained as follows: the result must be achieved in the least harmful manner and, where there are several possible approaches to a situation of conflict, the least harmful one must always be chosen. This calls for an assessment of the situation, in line with the above-mentioned five-phase model, through dialogue, negotiation, persuasion and the intervention of a neutral party. It is only when such an approach proves ineffective or is considered inappropriate that means of coercion or of intervention may be used. Here again, the least harmful means of achieving the desired result should always be chosen (Ministerial Circular No. 1810 of 19 November 2009 on means of coercion and intervention equipment, (2) basic principles governing the use of restraint, point (b)).

"(2) Any use of direct coercion shall be reasonable and proportionate to the desired result."

The use of restraint must not only be based on the desired result but also on the circumstances of the specific case (Principle of proportionality). (Ministerial Circular No. 1810 of 19 November 2009 on means of coercion and intervention equipment, (2) basic principles governing the use of restraint, point (b)).

"(3) Prior warning should be given before using direct coercion, unless circumstances do not allow or unless any prior warning would render the use of direct coercion ineffective.

Art. 121. When direct coercion is applied, it shall be recorded in a special register, with an explanation of the circumstances that led to the application of the security measure, the time at which it was applied and its duration."

30. A register in which each instance of direct coercion is recorded is kept in every detention facility:

Date	*Identity of the official(s) called on to use physical restraint*	*Identity and status (detainee other) of the person restrained*	*Circumstances justifying the use of restraint*	*Measure applied*	*Duration (exact start and end times)*

Consolidated Ministerial Circular 1792 of 11 January 2007, III. Measures of direct coercion, point (5).

31. The supervisory bodies have access to the special register.

Training of police officers

32. The principle of the absolute prohibition of torture is covered in police training on fundamental rights in general and is the guiding principle of the Police Service's legal and ethical framework. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials are incorporated in the legislation applicable to the police, particularly in the Police Functions Act of 5 August 1992, the Police Service Code of Ethics and various legal and regulatory provisions setting out the conditions governing any use of force by the Police Service.

33. The Police Service training system ensures that officers have a solid theoretical and practical knowledge of the above-mentioned provisions throughout their careers. The police training system is currently undergoing major reform and remains a matter of priority. The Police Service continues to take action in those fields and to strengthen, at all levels, staff training and awareness-raising activities relating to fundamental rights, focusing in particular on the practical side.

Training of Immigration Office staff

34. Training for Immigration Office staff on the use of restraint in line with article 74/8, paragraph 6, subparagraph 3, of the Act of 15 December 1980 consists of basic training and a refresher course.

35. The basic training is designed to provide Immigration Office staff with the basic knowledge required and to develop the skills and abilities necessary to perform their duties. A refresher course is run to remind staff of theoretical and practical knowledge acquired and to update it. The training course is held each year for security staff and is followed up, once, one year after the basic training.

36. As part of the training course, participants are reminded of and updated on the following:

- Legal and regulatory aspects of the use of restraint;
- The techniques required for the use of restraint;
- Conflict and communication management required when using restraint.

37. During the training, it is explained both in theoretical and practical terms, that, apart from the fact that restraint may only be used to achieve a legitimate aim, its use is governed by the principles of legality, proportionality and subsidiarity. In brief, staff learn that before resorting to force, they must ask themselves three questions:

- Is the aim of my intervention legitimate?
- Can the objective be achieved through less violent means?
- Given the desired result and the specific circumstances of the case in question, are the means of restraint reasonable and proportionate?

38. The training courses are based on real-life situations. Their purpose is to enable staff faced with a dangerous or potentially dangerous situation to tackle and manage it with maximum safety and to resolve it with the minimum use of restraint. Trainers highlight the need for the use of force to be applied gradually and progressively.

D. The oversight and monitoring body of the Police Service: Committee P

39. Committee P considers that the following information may be useful in providing an overview of the issue of the independence and effectiveness of an oversight mechanism for the Police Service and, in particular, of the safeguards put in place to ensure the independent and external nature of the monitoring by that mechanism. Committee P wishes to emphasize strongly that, apart from some rather theoretical thinking on the subject, it has never been aware of the slightest complaint or actual or specific recrimination concerning the independence, neutrality or even the impartiality of any of its investigations or of any of the members of its Investigation Service.

40. The Standing Committee for Police Monitoring was established by the Organization Act of 18 July 1991. The aim of that Act was to introduce external comprehensive monitoring of police services in Belgium by an impartial, independent pluralist institution that was directly answerable to Parliament.

41. Committee P is directed by a board of five working members, including a chairperson, who are appointed for a renewable term of six years. The board is assisted by an Administrative Service, which is headed by a registrar, and by an Investigation Service, the members of which work directly and exclusively under the Committee's authority and responsibility, except when the Service is assigned criminal investigation duties. Since 1 April 2007, complaints submitted to Committee P have been handled by the "complaints unit", which is staffed exclusively by administrative personnel, i.e. not by police officers.

42. The issue of the independence of the members of the Police Investigation Service has been raised by various international human rights monitoring bodies. Each of these bodies expressed concern about the independence of Committee P because a number of the members of its Investigation Service were recruited from units of the police service.

43. Before focusing on its own situation, Committee P considers that it may be useful to shed more light on the issue by reviewing the discussions on the subject that took place within the European Partners against Corruption forum for national police oversight bodies. Some of those bodies stand alone, others report to the national Parliament, still others to the Minister of Justice, the Minister of the Interior or the Prime Minister; some of them are branches of the public prosecutor's office, and others are an integral part of the country's police force. At the forum, a working group was assigned the task of formulating principles and standards governing the action of public institutions entrusted with external oversight of police forces, resulting in the adoption, on 25 November 2011, of the "Police Oversight Principles". Those principles were largely based on the rulings of the European Court of Human Rights and the European Code of Police Ethics. Among the criteria established relating to independence, point 2.2 on organizational independence states the following:

> "2.2.1 A police oversight body should have the necessary independence to carry out its duties. At least one should ideally not form part of the executive branch of the government and should report directly to Parliament.
>
> "2.2.2 The police oversight body should be sufficiently separated from the hierarchy of the police that are subject to its remit. (Key principle)
>
> "2.2.3 The police oversight body should be governed and controlled by persons who are not current serving police officers. (Key principle)

"2.2.4 Each person in charge of governance and control of a police oversight body should be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services.*[5]

"2.2.5 Each person in charge of governance and control of a police oversight body should have security of tenure and should be initially appointed for a minimum of 5 years. The tenure should last for a maximum of 12 years.

"2.2.6 The person in charge of governance and control of a police oversight body should not be dismissed for decisions or actions taken on behalf of the body.

"2.2.7 Police oversight bodies should have the freedom to employ former, current or seconded police officers or other law enforcement officials at their discretion where this does not conflict with their operational independence.

"2.2.8 A police oversight body should in general have the power and competence to, at its own discretion, address the general public and the media about aspects of its work. (Key principle)."

44. Clearly, Committee P fully satisfies all of those criteria.

45. Furthermore, the issue of the independence and neutrality of persons responsible for processing and investigating complaints by members of the public against the police and was considered at an Expert Workshop organized by the Council of Europe at the instigation of the Commissioner for Human Rights, Thomas Hammarberg, on 26 and 27 May 2008.[6] Committee P was invited to give a presentation on its composition and operating methods during a working session on independence and effectiveness; the presentation did not attract any particular comments from the participants. In the light of the discussions that took place at the forum, Committee P is confident that its operating methods, the composition of its staff and its management are fully in line with the recommendations of the European bodies. As to the issue of the investigation of police conduct by the police, the report of the Expert Workshop states: "Discussion in the Workshop focused on the need for police investigative expertise and the financial costs of training investigators/seconding officers. The consensus was that a mixture of police and non-police investigators is necessary."[7] During the discussions, a consensus was also reached on the fact that certain criminal investigations could only be entrusted to persons with police training and experience (former or seconded police officers).

46. By way of follow-up to the Expert Workshop, the Commissioner for Human Rights issued an Opinion concerning independent and effective determination of complaints against the police,[8] largely based on the requirements of the jurisprudence of the European Court of Human Rights relating to articles 2 and 3 of the European Convention on Human Rights (ECHR).

"29. An independent and effective complaints system is essential for securing and maintaining public trust and confidence in the police, and will serve as a fundamental protection against ill-treatment and misconduct. An independent police complaints body (IPCB) should form a pivotal part of such a system.

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[5] The passages marked with an * reflect the opinion of the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg, concerning independent and effective determination of complaints against the police (issued on 12 March 2009) (see below).

[6] See report CommDH (2008) 16. Following the workshop, the Commissioner issued guidelines on the matter (below).

[7] See CommDH (2008) 16, p. 3.

[8] Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police, CommDH (2009) 4, of 12 March 2009.

"30. Five principles of effective police complaints investigation have been developed in the jurisprudence of the European Court of Human Rights on Articles 2 and 3 of the ECHR:

"1. Independence:[9] there should not be institutional or hierarchical connections between the investigators and the officer complained against and there should be practical independence;[10]

"2. Adequacy:[11] the investigation should be capable of gathering evidence to determine whether police behaviour complained of was unlawful and to identify and punish those responsible;

"3. Promptness:[12] the investigation should be conducted promptly and in an expeditious manner in order to maintain confidence in the rule of law;

"4. Public scrutiny:[13] procedures and decision-making should be open and transparent in order to ensure accountability; and

"5. Victim involvement:[14] the complainant should be involved in the complaints process in order to safeguard his or her legitimate interests.

"31. Articles 2 and 3 of the ECHR are fundamental provisions and enshrine basic values of the democratic societies making up the Council of Europe.[15] There are two principal purposes of the five ECHR effective police complaints investigation principles. On the one hand, they have been developed to ensure that an individual has an effective remedy for an alleged violation of Article 2 or 3 of the ECHR.[16] On the other hand, the principles are intended to protect against violation of these fundamental rights by providing for an investigative framework that is effective and capable of bringing offenders to justice.[17]

"32. The minimum requirement is that a member state must ensure arrangements are in place to comply with the five principles in the event that Article 2 or 3 of the ECHR is engaged. In furtherance of this aim the CPT has strongly encouraged the creation of a fully-fledged independent investigative body.[18]

[9] See, for example, *Ramsahai v. The Netherlands* (Application No. 52391/99), Judgment of 15 May 2007; *Batı v. Turkey* (Application Nos. 33097/96 and 57834/00), Judgment of 3 June 2004.

[10] In the case of *Ramsahai v. The Netherlands*, the Chamber had pointed out in its Judgment of 10 November 2005: "The National Police Internal Investigations Department, a nationwide service with its own chain of command and answerable to the country's highest prosecuting authority, the Procurators General, had sufficient independence for the purposes of Article 2 of the Convention." In its Judgment of 15 May 2007, the Grand Chamber expressed the view: "The independence of the National Police Internal Investigations Department has not been questioned before the Grand Chamber, which for its part sees no reason to reach a different conclusion from that of the Chamber on this point."

[11] See, for example, *Nachova v. Bulgaria* (Application Nos. 43577/98 and 43579/98), Judgment of 6 July 2005; *Aksoy v. Turkey* (100/1995/606/694), Judgment of 18 December 1996.

[12] See, for example, *Isayeva v. Russia* (Application Nos. 5794/00, 57948/00 and 57949/00), Judgment of 24 February 2005; *Aydin v. Turkey* (57/1996/676/866), Judgment of 25 September 1997.

[13] See, for example, *Ognyanova v. Bulgaria* (Application No. 46317/99), Judgment of 23 February 2006; *Chitayev v. Russia* (Application No. 59334/00), Judgment of 18 January 2007.

[14] See, for example, *McKerr v. UK* (Application No. 28883/95), Judgment of 4 May 2001.

[15] See, for example, *McCann v. UK* (17/1994/464/545), Judgment of 20 February 1995; *Selmouni v. France* (Application No. 25803/94), Judgment of 28 July 1999.

[16] See, for example, *Salman v. Turkey* (Application No. 21986/93), Judgment of 27 June 2000, para. 123.

[17] See, for example, *Nachova v. Bulgaria* (Application Nos. 43577/98 and 43579/98), Judgment of 6 July 2005, para. 110.

[18] The CPT Standards, Chapter IX, para. 38.

"33. More broadly, the five principles also serve as helpful guidelines for the handling of all complaints. The existence of an independent police complaints body (IPCB) with comprehensive responsibilities for oversight of the entire police complaints system will reinforce the independence principle. Practices are suggested in this Opinion in support of a human rights compliant police complaints system which will allow for appropriate and proportionate responses to all complaints.

"34. Primary legislation should provide for the operation of an IPCB with general responsibilities for oversight of the police complaints system and express responsibility for investigating Articles 2 and 3 complaints in accordance with the ECHR independence principle. Arrangements in the form of, for instance, secondary legislation, regulations, statutory guidance and protocols, will be required to enable the police and IPCB to work together in partnership and ensure that all complaints are handled fairly, independently and effectively.

"35. The institutional design of IPCBs established in a number of jurisdictions in Europe in recent years has taken the form of specialized ombudsman institutions or, alternatively, standing commission structures. The appointment of a Police Ombudsman or a Police Complaints Commission, comprising a number of commissioners coordinated by a Chairman, are each capable of overseeing a fair, independent and effective complaints system. The United Nations Principles relating to the status and functioning of national institutions for protection and promotion of human rights (Paris Principles) are also relevant in gauging the independence and functioning of IPCBs. Naturally, the constitutional arrangements and policing systems, along with historical, political and cultural influences, prevailing in each member state will play a major part in determining the institutional arrangements for an IPCB.

"36. The IPCB must be transparent in its operations and accountable. Each Police Ombudsman or Police Complaints Commissioner should be appointed by and answerable to a legislative assembly or a committee of elected representatives that does not have express responsibilities for the delivery of policing services.[19]

"37. Sufficient public funds must be available to the IPCB to enable it to perform its investigative and oversight functions. IPCB investigators must be provided with the full range of police powers to enable them to conduct fair, independent and effective investigations.

"38. The IPCB should be representative of a diverse population and make arrangements to consult all concerned in the police complaints system. These include complainants and their representatives, police services and representative staff associations, central and local government departments with policing responsibilities, prosecutors, community organisations and NGOs with an interest in policing.

"39. The IPCB should respect police operational independence and support the head of police as the disciplinary authority for the police service. There should be adherence to a clear division of responsibility between the IPCB and the police with full co-operation from the police, which will help maintain high standards of conduct and improve police performance.

"40. The IPCB should have responsibility for the investigation of complaints in which:

- Article 2 or 3 of the ECHR is engaged; or

[19] See, for example, *Khan v. UK* (Application no. 35394/97), Judgment of 27 June 2000, para. 46.

- An issue of criminal or disciplinary culpability arises.

In addition, the police may voluntarily refer complaints to the IPCB; the member of Government with responsibility for policing may require the IPCB to conduct an investigation into a policing matter where it is considered to be in the public interest to do so; or the IPCB may call in for investigation any policing matter where it is considered to be in the public interest to do so.[20]

"41. The police should have responsibility for the investigation of complaints in which:

- Article 2 or 3 of the ECHR is not engaged;
- No issue of criminal or disciplinary culpability arises; or
- The IPCB refers responsibility for the handling of a complaint to the police."

47. With those principles firmly in mind, we may revert to the situation of Committee P and its Investigation Service. The Organization Act on Monitoring the Police and Intelligence Services of 18 July 1991 sets forth six policy criteria designed to enable Committee P to fulfil its external monitoring mandate under optimal conditions.[21] Those criteria are as follows:

(1) Monitoring should be external and independent of police services, the executive, the judiciary and command structures;

(2) Monitoring should be ongoing, forming an integrated and consistent part of police practice;

(3) Monitoring should be effective, its effectiveness being ensured by the availability of adequate resources and a mandate conferring the necessary powers to conduct in-depth investigations;

(4) Monitoring should be public, with maximum transparency, subject to such safeguards as may be necessary for the sake of confidentiality;

(5) Monitoring should be specific in that it should be the sole mission of the monitoring body, whose work should supplement existing monitoring and inspection activities organized by command structures and judicial authorities; and

(6) Monitoring should be lawful, conducted in all cases in accordance with the monitoring body's operating methods as set forth by law.

48. The implementation of the criteria of independence of monitoring and effectiveness of monitoring will be discussed in greater detail below.

I. Independence of monitoring

(11) A monitoring body that is external from the police services and under the power of the legislature

49. Like Parliament's other subsidiary bodies, including the Court of Audit, the Federal Mediators' Association, the Commission for the Protection of Privacy, the Higher Council of Justice, and the Standing Committee for Intelligence Services Monitoring, Committee P is a unique institution that is neutral, independent, entirely separate from the executive and the judiciary, and under the authority of and funded by Parliament.

[20] See, for example, *Acar v. Turkey* (Application no. 26307/95), Judgment of 8 April 2004, para. 221.

[21] Draft organization act on monitoring the police and intelligence services, Explanatory memorandum, Parl. Docs. Chamber, 1990–1991, No. 1305/1, pp. 5 and 6.

50. A Standing Committee has been established within the Chamber of Representatives to monitor the activities of Committee P: the Special Committee responsible for parliamentary oversight of Committee P. The Special Committee meets with Committee P at least once every quarter. It may make recommendations regarding the activities of Committee P, ask questions and formulate requests on any matter relating to the monitoring of police services or enforcement of the Organization Act of 18 July 1991 and the corresponding rules of procedure. However, the Special Committee has no authority over and cannot give orders or prohibit any activities in respect of Committee P.

51. The role of Committee P is tied to the principle of the separation of powers: the Committee serves the legislative power in order to assist it in its constitutional duty of monitoring the executive power. Committee P assumes no responsibility for the organization or operation of the police services it monitors, and operates as an entirely independent institution from the executive power and the police services[22] it serves, and also from the judiciary.

52. Its complete independence from the police services, which fall primarily under the authority of the executive, is one of the fundamental differences between Committee P and other monitoring and inspection bodies such as the Inspectorate General of the Federal and Local Police and other internal monitoring services within police forces or zones. As a result, Committee P enjoys total independence from the police system.

(12) Safeguards in terms of the independence of members of the board

53. The five members of Committee P, who comprise the board, and the registrar are appointed by the Chamber of Representatives, which can also remove them from office. Before taking up their duties, they are sworn in by the Speaker of the Chamber of Representatives. This appointment procedure for the members of Committee P and the registrar clearly establishes the independence and neutrality of the Committee and its separation from other forms of monitoring and inspection.

54. The Organization Act of 18 July 1991 sets out a number of incompatibilities and prohibitions in order to ensure the full neutrality and independence of the members of the board of Committee P. They may not occupy any electoral public office, nor may they accept any employment or engage in any public or private activity that might jeopardize the independence or integrity of the Committee's work. They may not be members of the Standing Committee for Intelligence Services Monitoring, a police service, or an intelligence-gathering organization.[23] A number of other safeguards are also noteworthy: (1) a member of the Committee may not be present at the hearings of any individual with whom he or she or any relative by blood or marriage to the fourth degree has a personal or direct interest;[24] (2) members of the Committee are liable to criminal prosecution if they divulge confidential information to which they become privy in the performance of their duties, even when their term of appointment has ended;[25] and (3) members of the Committee are subject to the Act of 18 September 1986 establishing political leave for staff members of public services.[26] Members of the board must also hold a top secret level of

[22] Within the meaning of article 3 of the Organization Act of 18 July 1991, namely, not only the federal police and local police forces, but also the special inspection services that operate in certain specific areas of criminal law, such as customs and excise, the environmental police, economic inspection, social inspection and the like, as well as individuals who are authorized to look for and make note of offences.

[23] Organization Act of 18 July 1991, art. 4.

[24] Organization Act of 18 July 1991, art. 63.

[25] Organization Act of 18 July 1991, art. 64.

[26] Organization Act of 18 July 1991, art. 65.

security clearance under the terms of the Act of 11 December 1998 on the classification of security clearance, certificates and notices.[27]

(13) Reporting method

55. Committee P submits a special report on each investigation to the Chamber of Representatives. The report describes all investigations or monitoring operations conducted and covers documents, activities or methods that might compromise citizens' constitutional rights or the coordination and effectiveness of the police services. The Committee must also report to the Chamber of Representatives and the Senate: (1) annually, in the form of a general activity report including general recommendations, conclusions and proposals; (2) when it deems it appropriate or at the request of the Chamber of Representatives, in the form of an interim activity report which may contain general conclusions and proposals relating to a specific investigation; (3) when the Chamber of Representatives assigns it an investigation; (4) where it ascertains, after a reasonable period (and in any case more than 60 days), that its conclusions have not been followed up or that the measures taken are inappropriate or insufficient.

56. After having reported to Parliament, the Committee may decide to make public all or part of its reports and conclusions by any means it deems appropriate (publication on the website, press release, etc.).

(14) Safeguards in terms of the independence of the members of the Police Investigation Service

57. The members of the Police Investigation Service may be divided into two categories:

(1) Members with fixed appointments. These are either members engaged by Committee P as statutory staff of the Police Investigation Service or members appointed after secondment who have become statutory members of the Committee by a transfer mechanism provided for under article 22 quater of the Organization Act of 18 July 1991.[28]

(2) Members with temporary appointments. Temporary appointments to the Police Investigation Service are for renewable five-year terms, for members seconded from another service, usually a police service, in which they have at least five years' experience in functions relating to policing activities. However, this kind of appointment confers a special status on members which is distinct from that of police officers and is therefore in no way determined by the status of police officers or members on secondment from one police service to another service or institution. All members of the Police Investigation Service are subject to the regulations governing the status of the Director General and members of the Police Investigation Service, adopted by Parliament on 17 February 2007. In addition, the Act of 18 April 2010[29] repealed the minimum quota for the recruitment of members of the Police Investigation Service by secondment, which was fixed until then at a

[27] Organization Act of 18 July 1991, art. 4.

[28] Article 22 quater of the Organization Act of 18 July 1991 states: "Any member of the Investigation Service who at the end of his or her first renewable five-year term under in article 20, paragraph 2, obtains a rating of 'good' at his or her final assessment may apply to Committee P to be permanently transferred to the statutory staff of the Police Investigation Service. Any member of the Investigation Service who at the end of his second renewable five-year term under article 20, paragraph 2, obtains a rating of 'good' at his or her final assessment shall have the right to transfer to the statutory staff of the Police Investigation Service."

[29] Act of 18 April 2010 amending the Organization Act of 18 July 1991 on Monitoring the Police and Intelligence Services and the Threat Analysis Coordination Agency (*Moniteur belge*, 17 June 2010).

minimum of half of the members of the Investigation Service, under the Organization Act of 18 July 1991, article 20, paragraph 2.

58. The membership of the Police Investigation Service is intrinsically linked to the duties assigned to it. There are three types of duties: (1) criminal investigation police duties; (2) certain fact-finding duties further to complaints lodged by private individuals, and (3) audits or internal oversight investigations (thematic, follow-up, etc.). The first two kinds of duties require the input of investigators with experience and expertise in judicial inquiries, hearings, special police investigation techniques, etc. Judicial inquiries entrusted to the Police Investigation Service are necessarily highly sensitive or prominent, and hence call for training and knowledge in specialized police techniques. The input of experts from a different entity or field is fundamental to audits or oversight investigations.

59. It is important to recall at this point that when Committee P was established, it was the intent of Parliament — as an interim provision set forth in article 67 of the Organization Act of 18 July 1991 — that the founding members of the Police Investigation Service should be appointed through secondment from a police service or administrative service (subject to the conditions regarding experience under article 20 of the Organization Act of 18 July 1991). This explains why, from the outset, the Service's staff has always included a considerable number of investigators who have been seconded from a police service but are temporarily totally separated from their original service by virtue of their new appointment or status. The Minister of the Interior stated at the time: "Our intention is to introduce certain changes gradually. We aim to minimize risk, as far as possible, by initially appointing only police officers to the Police Investigation Service. Police officers have the training required to conduct police investigations. Other persons may also be appointed in due course. Those persons will have the benefit of working as part of an experienced team that can provide them with the necessary training and assistance. It is essential to bear in mind that members of the Police Investigation Service are officers of the criminal investigation police."[30]

60. Furthermore, it is important to note that, during their monitoring duties, members of the Police Investigation Service work directly and exclusively under the authority and responsibility of Committee P, which receives reports on all investigations conducted. Committee P, through its board members, is responsible both for opening investigations and for their conclusions (which are brought to the attention of Parliament). Committee P makes its own decisions about which investigations it conducts and in what manner. Again without prejudice to the Police Investigation Service's criminal investigation duties, the reports that are produced and submitted are in all cases those of Committee P – not of its Investigation Service or any individual investigator. However, when performing their criminal investigation duties, members of the Police Investigation Service work on behalf of the judicial authorities, under the authority and supervision of those authorities (the crown prosecutor or investigating judge), and not under the authority of Committee P. The Director General of the Police Investigation Service is responsible for relations with the judicial authorities from which submissions for trial are received and to which statements prepared by the members of the Police Investigation Service are transmitted when a crime or an offence is brought to their knowledge. Casting doubt on the independence of the members of the Police Investigation Service in connection with the performance of their criminal investigation duties is tantamount to challenging the authority of the judicial authorities themselves, in the same way as casting doubt on the independence of the members of the Police Investigation Service in connection with the performance of their monitoring duties is tantamount to challenging the independence of Committee P itself.

[30] Parl. Docs. Chamber, 1990–1991, No. 1305/8, p. 109.

61. The Organization Act of 18 July 1991 provides for various measures to guarantee the independence and neutrality of the members of the Police Investigation Service who are seconded from other police or State administrative services. These include (1) the possibility of their permanent transfer to the statutory staff of the Police Investigation Service;[31] (2) retaining the entitlements of their original service;[32] (3) their placement under the disciplinary authority of Committee P and not that of their original service;[33] (4) their appointment to a higher rank;[34] (5) and specific conditions relating to promotion.[35]

II. Effectiveness of monitoring

(II.1) Various investigation tools

62. In order to enable Committee P to perform its mandate of integrated and comprehensive monitoring of the manner in which the police services discharge their duties, Parliament has provided the Committee P with various investigation tools for accessing information so that it has an overview of the police world and the problems it faces that is reliable, relevant and as thorough as possible. It is important to mention that these investigation tools are made available to Committee P and its Investigation Service in the context of oversight investigations and investigations following a complaint or report. When the members of the Police Investigation Service take part in a judicial inquiry, they act under the authority, and supervision of the judicial authorities and the investigation tools available to them are determined by the Code of Criminal Procedure and the specific laws on the powers of criminal investigation police officers.

63. Without prejudice to the legal provisions relating to jurisdictional immunities and privileges, Committee P and its Investigation Service may invite any person whose testimony is deemed essential to a hearing. Members of the police services must respond to any written summons they receive and can give evidence concerning matters covered by professional codes of confidentiality.[36] The Chairperson of Committee P may use bailiffs to summon members of the police services as witnesses. Members of the police services must swear an oath before giving evidence and, failing that, are liable to criminal proceedings. They are obliged to disclose to Committee P any confidential information in their knowledge, except information pertaining to a judicial inquiry or investigation under way. If the police officers consider that they are not in a position to disclose the confidential information because doing so would put the physical safety of an individual at risk, the issue is referred to the Chairperson of Committee P for a decision.[37] Committee P and its Investigation Service may request the assistance of experts or interpreters.[38] Any police officer who refuses to testify before the Committee and any expert or interpreter who refuses to assist the Committee in its work is liable to criminal prosecution.[39] Lastly, in the performance of their duties, members of the Police Investigation Service may request the assistance of the law enforcement authorities.[40]

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[31] Organization Act of 18 July 1991, article 22 quater.
[32] Organization Act of 18 July 1991, article 20.
[33] Organization Act of 18 July 1991, article 20 bis.
[34] Organization Act of 18 July 1991, article 20.
[35] Organization Act of 18 July 1991, article 22 bis and article 22 ter.
[36] Organization Act of 18 July 1991, article 24, paragraph 1.
[37] Organization Act of 18 July 1991, article 24, paragraph 2.
[38] Organization Act of 18 July 1991, article 24, paragraph 3.
[39] Organization Act of 18 July 1991, article 24, paragraph 4.
[40] Organization Act of 18 July 1991, article 25.

64. Members of the Police Investigation Service are empowered to conduct searches of all premises where the members of a police service perform their duties and may seize any objects and documents that may assist in an investigation.[41]

65. Furthermore, Committee P and the Director General of the Police Investigation Service may set time limits for the police services or their members to reply to questions they have been asked in the performance of their duties.[42]

66. In addition, the judicial and police authorities are legally required to provide Committee P with a variety of information, documents or files, under articles 9, 10, 14, 14 bis, 14 ter, 19 and 26 of the Organization Act of 18 July 1991, which state the following:

- The Prosecutor General and the Auditor General shall automatically transmit copies of judgements and orders concerning offences committed by a member of the police services;[43]
- The crown prosecutor, the Labour Auditor, the Federal Prosecutor or the Prosecutor General for the Court of Appeal, as the case may be, shall inform the Chairperson of Committee P whenever investigation or examination proceedings have been instituted against a member of the police services;[44]
- The Commissioner General of the Federal Police, the Inspectorate General of the Federal and Local Police and the local police chiefs shall forward to Committee P copies of all complaints and reports received concerning the police services, together with a brief summary of the findings of the investigations once they have been closed;[45]
- The competent disciplinary authorities shall submit detailed information on a monthly basis to Committee P concerning the disciplinary action taken against members of the police services;[46]
- The Commissioner General of the Federal Police, local police chiefs and the Inspector General of the Inspectorate General of the Federal and Local Police who establish an annual report or any other general report regarding their operations, shall transmit a copy to the Chairperson of Committee P within two weeks of its compilation;[47]
- Any member of a police service who learns of a crime or an offence committed by a member of the police service is required to compile and communicate an information report within two weeks to the Director General of the Police Investigation Service.[48]

67. The Chairperson of Committee P may also request from the Prosecutor General or the Auditor General a copy of every record, document or item of information relating to criminal proceedings against members of a police service for crimes or offences committed in the performance of their duties. However, if the record, document or item of information relates to a judicial investigation under way, it can only be communicated upon authorization of the investigating judge.[49] Committee P and its Investigation Service are

[41] Organization Act of 18 July 1991, article 27.
[42] Organization Act of 18 July 1991, article 27 bis.
[43] See Organization Act of 18 July 1991, article 14 , paragraph 1.
[44] See Organization Act of 18 July 1991, article 14, paragraph 2.
[45] See Organization Act of 18 July 1991, article 14 bis, paragraph 1.
[46] See Organization Act of 18 July 1991, article 14 bis, paragraph 2.
[47] See Organization Act of 18 July 1991, article 14 ter.
[48] See Organization Act of 18 July 1991, article 26.
[49] See Organization Act of 18 July 1991, article 14, paragraph 3.

also entitled to have access to any texts they consider necessary for the fulfilment of their mandate.[50] In order to ensure information exchange, cooperation and consultation, mechanisms for the transfer of information have been set up through protocols agreed with the Federal and Local Police, the Inspectorate General of the Federal and Local Police, the monitoring body for the management of police information and the Interfederal Centre for Equal Opportunities.

(II.2) Quality ensured through high recruitment standards, advanced in-service training and modern working methods

68. Committee P pays particular attention to the competence of the members of its Investigation Service. In addition to complying with high-level selection criteria and strict recruitment procedures, successful candidates must undergo a period of training or probation. All these elements serve as proof of the reliability and professionalism of the members of the Police Investigation Service. The in-service training that they receive, in both judicial matters and management, increases their capacity to deal with the situations that arise. The members of the Police Investigation Service must be familiar with legislation and regulations relating to the police services, and must also have knowledge of international policing models (community policing, zero tolerance etc.), modern management methods, auditing and quality control. These new investigation and monitoring methods have been implemented within Committee P at the instigation of Parliament. The members of the Police Investigation Service, as members of a "learning organization", receive in-service training. For instance, in addition to specialized training relating to various matters investigated by the Investigation Service, training has been provided on total quality management, auditing techniques, the balanced scorecard, the European Foundation for Quality Management, the Common Assessment Framework, International Organization for Standardization certification and other reference models and techniques, such as that of the Committee of Sponsoring Organizations of the Treadway Commission. The monitoring procedures followed by the members of the Police Investigation Service draw on the most recent management publications and courses imparted by independent consultants on the subject. The investigations assigned to members are conducted in accordance with pre-established procedures and are often based on detailed guidelines that enable the investigator to gain a complete overview of a police service or unit, identify its strengths and weaknesses, make recommendations, and, occasionally, examine an existing practice or the working environment within a particular unit.

69. The effectiveness of the Police Investigation Service's interventions is measured over the short term or over the medium term. From the outset of an investigation into a police service or unit, Committee P investigators note a growing awareness among the individuals concerned. In most cases, those individuals quickly and clearly realize that there is a problem and that the investigators have intervened not to punish those responsible but to help them improve their methods or attitude. The procedure comprises clearly defined objectives: identifying irregularities, bringing them to the attention of the persons concerned, requesting their cooperation, and encouraging them to find joint solutions. When engaging in proactive work and observing police practices, the Police Investigation Service does of course not intervene immediately. Its influence is felt subsequently through a written report on all its findings, accompanied by general recommendations. Everything is then sent to the police services or units concerned and to the police authority. In most cases the approach is constructive and positive: its primary purpose is not to expose individuals, but to use them as anonymous examples in order to draw attention to inappropriate or unacceptable conduct. This enables the whole service or unit concerned to benefit from the

[50] See Organization Act of 18 July 1991, article 14, paragraph 2.

findings of investigations or studies. Under certain circumstances, however, in particular the seriousness or specific nature of the acts or situations under investigation, a different approach may be taken. Experience has shown that, in certain cases, members of the Police Investigation Service have not hesitated to draw up a formal statement and initiate proceedings. The Chairperson of Committee P has the right to give instructions to the disciplinary authorities. Thus, when the Chairperson informs the disciplinary authority of events which may constitute a breach of discipline, that authority must ascertain whether those events require the launch of a disciplinary procedure and inform the Chairperson of action taken in response to the information provided.[51]

70. Needless to say, in practice, duties are assigned to members of the Police Investigation Service taking into account the police service or unit that they come from and any affinities they may have with it. A member of the Service who has been temporarily seconded from a police service or unit will of course never, under any circumstances, be ordered to conduct an investigation involving his or her service or unit.

IV. Paragraph 14: Complaint mechanisms in prisons and closed centres

"14. The Committee notes with concern that the Principles Act of 12 January 2005, which deals with prison administration, the legal status of prisoners and the right to complain to an independent body, has not yet entered into force. The Committee further notes the explanations given by the State party as to how the Complaints Commission functions in closed centres, but remains concerned that foreigners often have difficulties in filing complaints and that no decision on the merits is adopted when the complainant has been expelled (arts. 12, 13 and 16).

The Committee invites the State party to take measures to implement the provisions of the Principles Act aimed at establishing an effective, independent complaints mechanism specifically devoted to monitoring and processing complaints in detention centres. The State party should take the necessary measures to ensure that all allegations of misconduct by detention centre and prison staff are duly examined and thoroughly and impartially investigated."

71. With regard to prisons, the provisions of the Principles Act establishing the right to complain to an independent body (the supervisory commissions) have not yet entered into force. Detainees may, however, apply to the Council of State, which has the power to annul or suspend any irregular administrative act, in particular on the grounds of "infringement of a substantive or mandatory procedure", "violation of the general legal principle of respect for the rights of defence", or "illegality or misuse of powers". Detainees may also apply to a court of law in the event of an infringement of one of their individual rights, on the ground that the situation requires urgent action, calling the State before the president of a court of first instance for an urgent ruling.

72. These available remedies against administrative decisions are explicitly mentioned in the documents provided to the detainees.

73. Posters have been put up in closed centres to inform detainees of the Complaints Commission and its role. An updated list of complaints is attached as an annex.[52] The

[51] Act of 13 May 1999 on the disciplinary regulations applicable to members of police services, article 26.

[52] Annex 1.

figures in green in column F represent resolved cases. Annex 2 shows the number of complaints in 2013 and 2014.[53]

74. There have been no further changes to practice based on a recommendation by the Commission, because since 2011 the Commission has not needed to formulate recommendations.

75. The mandate of the Complaints Commission does not cover the examination and thorough investigation of all allegations of misconduct by staff in closed centres, which come under the ambit of the courts of law. In this regard, it should be noted that neither the Complaints Commission nor the inspection services of the closed centres have received reports of cases of misconduct brought before the courts.

76. Article 129 of the Royal Decree of 2 August 2002, amended by the Royal Decree of 7 October 2014,[54] provides that a detainee in a closed centre may also file a written complaint with the director of the centre or the deputy within 24 hours. The complaint may be made in one of the national languages, English or the language of the detainee's country of origin. The director of the centre or the deputy shall provide a reply within 10 working days. A copy of the complaint and the reply shall be sent to the Director General of the Immigration Office or the deputy as well as to the Permanent Secretariat.

77. Lastly, article 62 of the Royal Decree provides that where a detainee is in contact with a lawyer, the lawyer shall be informed at least 48 hours prior to any initial attempt to remove the detainee, unless the detainee requests otherwise.

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[53] Annex 2.

[54] Publication in the *Moniteur belge* on 21 October 2014.